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EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2617

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/537,812

Applicant(s)

WHITE ET AL.

Examiner

Jean A. Gelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to the Applicant's arguments and amendments filed on May 22, 2006 in which claims 40, 59, 66, and 76 have been amended. Claims 40-81 are currently pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 40-81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding to claims 40-81, the phrase "capable of" renders the scope of the claim vague and indefinite.

It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 59, 60, and 62 are rejected under 35 U.S.C. 102(a) as being anticipated by Rydbeck et al. (WO 99/43136).

Consider claim 59, Rydbeck et al. clearly show and disclose a method for managing audio outputs for a cellular telephone 10 (communication device) (figures 1 and 2) comprising: playing an audio file received via a cellular communication (e.g., playing back music or audio downloaded and received via transceiver 12, 18 from the internet) (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, and page 7, lines 22-25); detecting an incoming cellular telephone call (i.e., microprocessor automatically detects incoming call in order to mute the music, page 7 lines 6-8); and altering playing of the audio file using a player operable to play multiple audio file formats (i.e., cellular device 10 can receive audio file from different sources such as CD, Internet and so on corresponding to multiple audio format) in response to detecting the cellular telephone call (i.e., by stopping the music the microprocessor alters the audio file, page 7 lines 6-8).

Consider claims 60 and 62, and as applied to claim 59 above, Rydbeck inherently disclose playing a second audio file stored within a memory 54, 56 of the cellular device 10 (figures 1-3) since they disclose that music and audio signals loaded and stored in the memory 54, 56, of the device 10 (abstract, page 2 lines 20-22, and page 6 lines 3-25) and the music or audio signals can be received from a computer or a CD player (i.e., via a non-wireless communication network) (reads on claim 62).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 68-70 and 72-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch (U.S. Patent # 6,247,130 B1) in view of Rydbeck et al. (WO 99/43136)

Consider claim 68, Fritsch clearly shows and discloses a wireless communication system (i.e., any wireless Internet access, column 2 line 64 - column 3 line 9) comprising: an Internet website provided in association with a cellular telephone (wireless Internet access communication device) operable to receive and play an audio file (e.g., music) selected by a user accessing the internet website external to the cellular telephone (wireless Internet access communication device) (abstract, figs. 1A-1D, column 1 lines 46-56 and 60-64, and column 2 line 64 - column 3 line 45, i.e., wireless Internet access communication device such PDA or cellular telephone can download music from Internet); a wireless communication network (inherently required to communicate the music to the cellular telephone disclosed in col. 3, lines 1-5) (column 2 line 64 - column 3 line 9) operable to communicate the audio file to the cellular telephone (communication device) identified through a user logging into the Internet website (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line 64 -column 3 line 45, and column 4 lines 13-37); and a server (digital engine) operable

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to communicate the audio file to the cellular telephone (communication device) (communication links or session are established between the server and the PC or any wireless communication device such as cellular telephone, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line 64 - column 3 line 45, and column 4 lines 13-37).

Fritsch does not clearly teach a server operable to determine availability of the cellular telephone to send audio file.

However, the preceding limitation is known in the art of communications. Rydbeck teaches receiving audio file to play from a network (i.e., server) via the transceiver of a cellular telephone, when an incoming call is received; the microprocessor automatically stops the playback of the audio file (pages 6-7). Clearly incoming calls have priority over audio file, when the phone is busy or in conversation mode, audio file cannot be received or played. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Rydbeck within the system of Rydbeck in order to give priority to incoming calls and user of the cellular telephone would not loss important calls while using the phone as an entertainment to play music.

Consider claim 69, and as applied to claim 68 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the Internet website is operable to present a user login page in association with identifying the cellular telephone (communication device) (abstract, figures 1A-1D, column 1 lines 46-56 and 60-64, column 2 line 64 - column 3 line 45, and column 4 lines 13-37).

Consider claim 70, and as applied to claim 69 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the Internet website is operable to provide access to downloadable software (e.g., music player) operable to be communicated to the cellular telephone (communication device) (column 3 lines 60-65).

Consider claim 72, and as applied to claim 68 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the Internet website presents a link to a selectable preformatted audio file operable to be communicated to the identified cellular telephone (communication device) (figures 1A-1D and column 4 line 57 - column 5 line 20).

Consider claim 73, and as applied to claim 72 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the preformatted audio files may be categorized within the Internet website by at least two of: genre, artist, most popular, newest, most viewed, and favorites (figures 1A-1C).

Consider claims 74 and 75, and as applied to claim 68 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the server (digital engine) is operable to enable access to streaming audio information and to provide links to streaming audio accessible by the cellular telephone (communication device) (e.g., the server (digital engine) provides a link for accessing a 20-second music clip (streaming audio) by the cellular telephone) (figures 1A-1C and column 4 line 57 - column 5 line 4).

Consider claim 76, and as applied to claim 69 above, Fritsch in view of Rydbeck teaches all the limitations above. Fritsch further discloses that the audio file may be communicated to the cellular telephone (communication device) independent of a user being logged into the internet website (e.g., the audio file (e.g., music) could be delivered to the user in several different ways besides immediate downloading (i.e., whether or not the user is logged into the internet website) (column 3 lines 3-9, column 5 lines 14-37, and col. 5 line 66 – col. 6 line 39).

8. Claims 40, 41, 43-46, and 50-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck et al. (WO 99/43136) in view of Lueck et al. (U.S. Patent # 6,721,710 B1).

Consider claims 40 and 52, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) (reads on claim 52) comprising: an RF transceiver 18 (cellular communication module) (figure 2) operable to receive an incoming telephonic communication (abstract, figure 2, page 5 lines 4-6, and page 7 lines 6-8) an entertainment (memory) module 50 (figures 2 and 3) operable to store one or more audio files (e.g., music or audio signals) received via a cellular communication network independent of the incoming telephonic communication (i.e., the music or audio signals are downloaded wirelessly from the internet (not associated with an incoming telephonic communication) (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25) a microprocessor/control logic 20 (processor) (figure 2) operable to alter a playing of at least one of the audio files (i.e., cellular device 10 can receive

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audio file from different sources such as CD, Internet and so on corresponding to multiple audio format) in response to the incoming telephonic communication (i.e., by stopping the music the microprocessor alters the audio file, page 7 lines 6-8).

However, Rydbeck does not specifically disclose that the entertainment (memory) module 50 store plural audio formats of one or more of the audio files. Nonetheless, the feature of a memory module storing plural audio formats of one or more audio files is well known in the art as evidenced by Lueck. In the same field of endeavor, Lueck teaches a portable digital audio player 100 (figure 1) comprising, among other components, a least flash memory 140 (figure 1) to store audio files wherein the audio files may be in different audio formats; the flash memory contains stored program files for decoding each type of audio formats allowing users of the portable communication device to listen to their desired song even though they store in different formats (e.g., M133 and AAC) and (column 2 lines 61-67 and column 3 lines 10-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the technique of Lueck within the system of Rydbeck in order that the audio files are stored in the memory as separate files for each song, which may be in different formats; thus increasing the efficiency of the portable communication device, and the allowing users of the communication to play any type of songs they desire without concern of the type of format.

Consider claim 41, and as applied to claim 40 above, Rydbeck et al., as modified by Lueck further disclose that the microprocessor/control logic 20 (processor) (figure 2)

is operable to stop playing of the audio file in response to the incoming telephonic communication (page 7 lines 6-8).

Consider claim 43, and as Applied to claim 40 above, Rydbeck et al. as modified by Lueck et al., inherently disclose that the microprocessor/control logic 20 (processor) (figure 2) is operable to enable sequential playing of plural audio files since they disclose that plural music or audio signals are downloaded and stored in the entertainment (memory) module 50 for subsequent playback (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3- 17, and page 7 line 22-25).

Consider claims 44 and 45, and as applied to claim 43 above, Rydbeck et al. as modified by Lueck et al, disclose the claimed invention except that the processor is operable to first play a WAV tile and second play an M1à3 file (claim 44) and to first play a M23 tile and second play an WAV file (claim 45).

Nonetheless, at the time the invention was made, it would have been obvious to a person of ordinary skill in the m4 to have the processor taught by Rydbeck et al., as modified by Lueck to first play a WAV file and second play an M23 file or vice versa since the processor is capable of playing plural audio formats (processor 1 10 is operable to store and play, respectively, plural audio formats (e.g., M133 and AAC) of one or more audio tiles or songs (Lueck figure 1, column 2 lines 61-67 and column 3 lines 10-12 and 47-51). Applicant has not disclosed that first play a WAV file and second play an M113 file and first play an M133 file and second play an WAV file provides an advantage, is used for a particular function, or solves a stated problem.

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One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the entertainment (memory) module so/processor 1 10 of Rydbeck and Lueck et al. because they are capable of sequentially playing plural audio formats.

Consider claim 46, and as applied to claim 43 above, Rydbeck et al., as modified by Lueck et al., disclose the claimed invention except that the plural audio tiles include WAV files.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to provide audio or music tiles in the format of WAV. As evidence by Guedalia US Pat. 6,907,112, the audio file is a wave file. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have plural WAV files, as known in the art, in the cellular communication device disclosed by Rydbeck, as modified by Lueck for the purpose of providing an alternative audio format for user's selection.

Consider claim 50, and as applied to claim 40 above, Rydbeck as modified by Lueck further disclose that the cellular telephone 10 (communication device) (figures 1 and 2) inherently comprises a low power RF carrier communication module (not shown) operable to communicate an output to a headset 40 (wireless speaker) (figures 1 and 2), the output including the playing of the at least one of the audio tiles or the incoming telephonic communication (page 3 lines 4-7, page 5 line 19 - page 6 line 8, and page 7 lines 4-8).

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However, Rydbeck as modified by Lueck do not specifically disclose that the low power RF carrier communication module is a Bluetooth module. Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a Bluetooth communication module for short range, low power RF communications between communication devices. The low power RF communication is equivalent to the Bluetooth connection between the headset and the mobile telephone disclosed in Tillgren et al. US Pat. 6,339,706. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a Bluetooth communication module, as known in the art as the low power RF carrier communication module disclosed by Rydbeck, as modified by Lueck, for the purpose of providing standardized short range R.F communication between the headset and the cellular telephone.

Consider claim 51, Rydbeck and Lueck, disclose all the limitations above. Lueck further teaches consumer may access the website via a PC or personal digital assistance (col. 3, lines 1-5).

Consider claim 53, and as applied to claim 40 above, Rydbeck et al., as modified by Lueck et al., further disclose that the cellular telephone 10 (communication device) (figures 1 and 2) is an Internet-enabled cellular telephone operable to access a list of downloadable preformatted music or audio signals files (page 6 lines 10-25).

However, Rydbeck as modified by Lueck et al., do not specifically disclose that the cellular telephone comprises a WAP browser.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a WAP browser to access the Internet from a cellular telephone.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a WAP browser, as known in the art, in the cellular telephone disclosed by Rydbeck et al., as modified by Lueck et al., for the purpose of providing standardized wireless internet access from the cellular telephone.

Consider claim 54, and as applied to claim 40 above, Rydbeck as modified by Lueck also disclose that the RF transceiver 18 (cellular communication module) (figure 2) is operable to receive music or audio signals files selected via an Internet website (i.e., inherent through the internet-enabled cellular phone 10) external to the cellular telephone 10 (communication device) (page 6 lines 10-25).

Consider claim 55, and as applied to claim 53 above, Rydbeck et al., as modified by Lueck further disclose that the entertainment module 50 (media player) is operable to play user selected media downloaded outside of a web browsing environment (e.g., loaded from a CD player or downloaded from a computer or a digitized audio source) (page 6 lines 3-17).

9. Claims 42 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck et 'al. (WO 99/43136) in view of Lueck et al. (U.S. Patent # 6,721,710 B1), as applied to claim 40 above, and further in view of Cao et al. (U.S. Patent Application Publication # 2005/0054379 A1).

Consider claim 42, and as applied to claim 40 above, Rydbeck as modified by Lueck disclose the claimed invention except that the microprocessor/control logic 20 (processor) is operable to enable a user to alter the playing of the at least one audio tile to answer the incoming telephonic communication.

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with M133 player capability (abstract) comprising, among other components, a processor (not shown) operable to enable a user to alter the playing of the at least one audio tile (e.g., M1:3 digital audio) to answer an incoming telephonic communication (paragraph 0023). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable a user to alter playing of the at least one audio file in response to an incoming telephone call, as taught by Cao et al., in the cellular telephone 10. (communication device) disclosed by Rydbeck, as modified by Lueck for the purpose of moving manual operational control of the combined telephone/audio player.

Consider claim 47, and as applied to claim 40 above, Rydbeck, as modified by Lueck, disclose the claimed invention except that at least one of the audio files include a streaming audio formatted file.

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with MP3 player capability (abstract) wherein at least one of the audio files comprises M173 digital audio bit stream (streaming audio formatted files downloaded from the Internet (abstract and paragraphs 0026 and 0034). Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to provide a streaming audio formatted file, as taught by Cao et al., in the entertainment (memory) module so disclosed by Rydbeck as modified by Lueck, for the purpose of providing alternative audio formats for user's selection.

Consider claims 48 and 49, and as applied to claim 40 above, Rydbeck, as modified by Lueck et al., disclose the claimed invention except that the microprocessor/control logic 20 (processor) is operable to pause playing of the audio file in response to the incoming telephonic communication (claim 48) and to enable listening of the telephone call upon answering the incoming telephonic communication (claim 49).

In the same field of endeavor, Cao et al. clearly show and disclose a cordless telephone (communication device) with M1à3 player capability (abstract) comprising, among other components, a processor (not shown) operable to pause playing of an audio file (e.g., M23 digital audio) in response an incoming telephonic communication (paragraphs 0023 and 0024) (reads on claim 48) and to enable listening of a telephone call upon answering the incoming telephonic communication (paragraphs 0023 and 0024) (reads on claim 49). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to pause playing the audio file and allow listening of the telephone call, as taught by Cao, in the cellular telephone 10 (communication device) disclosed by Rydbeck as modified by Lueck, for the purpose of avoiding missing telephone calls.

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10. Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck (WO 99/43136) in view of Lueck et al. (U.S. Patent # 5,721,710 B1) and further in view of Fritsch (U.S. Patent # 6,247,130 B1).

Consider claim 56, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) comprising: an entertainment memory/processor) module 50 (figures 2 and 3) operable to store and play one or more audio files (e.g., music or audio signals) (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25); an RF transceiver 18 (communication module) (figure 2) operable to receive an audio file (e.g., music or audio signals) selected by a user accessing an Internet website (i.e., inherent through the internet-enabled cellular phone 10) accessible external to the cellular telephone 10 (cellular communication device) and operable to provide the user access to plural audio files (e.g., music or audio signals) (abstract, page 2 line 20 - page 3 line 3, page 6 lines 3-17, and page 7 line 22-25)) and a low power RF carrier communication module (not shown) operable to communicate an in process playing of at least one of the audio files (e.g., music or audio signals) or a telephonic communication to a headset 40 (wireless speaker) (figures 1 and 2, page 3 lines 4-7, page 5 line 19 - page 6 line 8, and page 7 lines 4-8).

However, Rydbeck et al. do not specifically disclose that the low power RF carrier communication module is a Bluetooth communication module.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to use a Bluetooth communication module for short range, low power RF communications between communication devices; the low power RF is equivalent to the

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Bluetooth connection between the headset and the mobile telephone disclosed in Tillgren et al. US Pat. 6,339,706. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a Bluetooth communication module, as known in the art, as the low power RF carrier communication module disclosed by Rydbeck et al. for the purpose of providing standardized short range R-F communication between the headset and the cellular telephone.

However, Rydbeck, as modified above, do not specifically disclose that the entertainment (memory/processor) module 50 store and play plural audio formats of audio files. Nonetheless, the feature of a memory and a processor operable to store and play, respectively, plural audio formats of audio files is well known in the art as evidenced by Lueck et al., who, in the same field of endeavor, clearly show and disclose a portable digital audio player 100 (figure 1) comprising, among other components, a flash memory 140 and a processor 110 (figure 1) operable to store and play, respectively, plural audio formats (e.g., M13 and AAC) of one or more audio files or songs (column 2 lines 61-67 and column 3 lines 10-12 and 47-51). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store and play plural audio formats of one or more audio files, as taught by Lueck et al., in the entertainment (memory/processor) module 50 disclosed by Rydbeck et al. for the purpose of providing alternative audio formats for user's selection. Nonetheless, Rydbeck, as modified by Lueck et al., do not specifically disclose that the user access to the Internet website is through a user login page.

In the same field of endeavor, Fritsch clearly shows and disclose a system and method for requesting and downloading songs (audio files) from an Internet website via a cellular communication device (abstract and column 2 line 64 - column 3 line 2) herein access to the songs (plural audio files) in the Internet website is provided to the user via a user login page (figures 1A- 1C, column 3 lines 10-19 and 30-32, and column 4 lines 16-30). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide access to the Internet website via a user login page, as taught by Fritsch, in the cellular telephone (communication device) disclosed by Rydbeck, as modified by Lueck, for authentication and security purposes.

Consider claim 57, and as applied to claim 56 above Rydbeck as modified by Lueck and as further modified by Fritsch, further show and disclose: a headset 40 (output means) (figure 1) for providing an audio output (page 5 line 19 -page 6 line 8), input means (keypad 30 and display 32) (figures 1 and 2) for selecting the audio file (page 5 lines 12- 15 and page 7 line 1-6); and browsing means (not shown but inherent since the telephone is Internet-enabled) for viewing available preformatted audio and media tiles (e.g., music or audio signals available for downloading in the Internet) (page 6 lines 10- 17).

Consider claim 58, and as applied to claim 56 above, Rydbeck, as modified by Lueck et al. and as further modified by Fritsch, also show and disclose a removable ROM 56(memory device) (figure 2) operable to store at least one audio file (page 6 line 5 - page 7 line 4).

11. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck et al. (WO 99/43136) in view of Shanahan (U.S. Patent # 6,496,692 B1).

Consider claim 61, and as applied to claim 60 above, Rydbeck further disclose: receiving the second audio file independent of the incoming cellular telephone call (i.e., the music or audio signals titles can be received from a computer through the internet or a CD player (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-25, page 7 lines 1-6, and page 7 lines 22-25); and storing the second audio file within the memory 54, 56 (abstract, figures 1-3, page 2 lines 20-22, and page 6 lines 3-25).

However, Rydbeck et al. do not specifically disclose playing the second audio file after detecting the incoming cellular telephone call. In the same field of endeavor, Shanahan clearly shows and discloses an electronic device operable to play a music file in response to an incoming wireless (cellular) telephone call wherein the music file has been received independent of the incoming wireless (cellular) telephone call (abstract, figures 1 and 5-7, column 2 line 65 - column 3 line 40, column 7 line 60- column 8 line 5, column 8 line 64 - column 9 line 2, and col. 9 line 6 1 – col. 10 line 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to, in response to an incoming cellular telephone call as taught by Shanahan, play a music file in the device taught by Rydbeck et al. for the purpose of provide distinctive incoming call alerting.

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12. Claims 63-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydbeck et al. (WO 99/43136) in view of Cao et al. (U.S. Patent Application Publication #2005/0054379 A1).

Consider claims 63 and 65, and as applied to claim 59 above, Rydbeck et al. clearly show and disclose the claimed invention except enabling access to a streaming media link within a user interface of the cellular telephone 10 (communication device); detecting selection of the streaming media link, and receiving the streaming media link, wherein the streaming media link comprises streaming audio (claim 65).

In the same field of endeavor, Cao et al. clearly show and disclose a method and a cordless telephone (communication device) with M23 player capability (abstract) comprising, among other steps, the steps of enabling access to 'a streaming media link (MP3 audio stream available in the Internet) within a user interface of the cordless telephone (communication device) (abstract, figure 4, and paragraphs 0019, 0026, and 0050-0054)4 detecting selection of the streaming media link and receiving the streaming media link (abstract, figure 4, and paragraphs 0019, 0026, and 0050-0054), wherein the streaming media link comprises streaming audio (i.e., M-P3 stream audio) (reads on claim 65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable access to a streaming media link, as taught by Cao, in the method disclosed by Rydbeck for the purpose of providing alternative audio formats for user's selection.

Consider claims 64 and 67, and as applied to claims 63 and 65 above, Rydbeck, as modified by Cao, further disclose altering playing of the streaming media in response to detecting the cellular telephone call (page 7 lines 6-8).

Consider claim 66, and as applied to claim 63, Rydbeck, as modified by Cao, also disclose the step enabling access to broadcast video (page 9 line 21 - page 10 line 2).

13. Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch (U.S. Patent # 6,247,130 B1) in view of Rydbeck et al. (WO 99/43136).

Consider claim 71, and as applied to claim 68 above, Fritsch clearly shows and discloses the claimed invention except that the cellular communication device is operable to alter playing of the audio file in response to receiving a telephonic communication communicated via the wireless communication network.

In the same field of endeavor, Rydbeck et al. clearly shows and discloses a cellular telephone 10 (communication device) (figures 1 and 2) operable to play' an audio file received via a cellular communication (e.g., playback music or audio downloaded and received via transceiver 12, 18 from the internet) (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, and page 7 lines 22-25) and alter playing of the audio file in response to detecting an incoming cellular telephone call (page 7 lines 6-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to alter playing of the audio tile in response to an incoming telephone call, as taught by Rydbeck et al., in the

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cellular telephone disclosed by Fritsch for the purpose of avoiding missing telephone calls.

14. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch (U.S. Patent # 6,247,130 B1).

Consider claim 77, and as applied to claim 69 above, Fritsch clearly show and disclose the claimed invention except that the Internet website is a WAP enabled Internet website.

Nonetheless, the Examiner takes Official Notice that it is notoriously well known in the art to provide WAP enabled Internet websites for accessing by cellular telephones utilizing WAP browsers. Zilliacus US Pat. 6,915,272 discloses cellular phone with wireless access protocol (WAP) may surf the Internet and order goods and services directly through the WAP-capable phone. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a WAP enabled Internet website, as known in the art, in the system disclosed by Fritsch for the purpose of providing standardized wireless internet access to the cellular telephone.

15. Claims 78-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch (U.S. Patent # 6,247,130 B1) in view of Bottum (U.S. Patent # 6,014,569).

Consider claims 78-80, and as applied to claim 68 above, Fritsch clearly shows and discloses the claimed invention except that the server (digital engine) is operable to provide access to an on-line radio or video broadcast. In the same field of endeavor, Bottum clearly shows and discloses a wireless communication system comprising an audio/video data provider (digital engine) 110 providing access, to a wireless

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communication device 150, to on-line audio or video broadcast (figures 1 and 2, column 4 lines 27-48, column 5 line 55 - column 6 line 3, and column 7 lines 58-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide access to an online broadcast, as taught by Bottum, in the system disclosed by Fritsch for the purpose of providing a variety of content to the user.

16. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fritsch (U.S. Patent # 6,247,130 B1) in view of Bottum (U.S. Patent # 6,014,569), as applied to claim 78 above, and further in view of Rydbeck et al. 0VO 99/43136).

Consider claim 81, and as applied to claim 78 above, Fritsch, as modified by Bottum, clearly shows and discloses the claimed invention except that the cellular communication device is operable to alter playing of an accessed broadcast in response to an incoming cellular telephone call. In the same field of endeavor, Rydbeck et al. clearly show and disclose a cellular telephone 10 (communication device) (figures 1 and 2) operable to play a radio or TV broadcast received via a cellular communication (abstract, figures 1 and 2, page 2 lines 20-22, page 3 lines 4-6, page 6 lines 3-5 and 10-17, page 7 lines 1-6, page 7 lines 22-25, and page 9 line 21 - page 10 line 2) and alter playing of the broadcast in response to detecting an incoming cellular telephone call (page 7 lines 6-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to alter playing of the broadcast in response to an incoming telephone call, as taught by Rydbeck et al., in the cellular

telephone disclosed by Fritsch, as modified by Bottum, for the purpose of avoiding missing telephone calls.

Response to Arguments

17. Applicant's arguments with respect to claims 40-81 have been considered but are moot in view of the new grounds of rejection.

The Applicant argues that the Examiner needs to provide specific references in lieu of making unsupported claims. As per Applicant's request, the Examiner recites in the rejections the references that the Examiner relies upon to write the Official Notice.

The Applicant further argues that the Examiner fails to show any suggestion or motivation to combine the references relied upon in the 103 rejections, and these rejections represent a case of impermissible hindsight.

18. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

19. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case for instance, the Applicant argues that there is no motivation or suggestion within Rydbeck and Lueck to combine such references to disclose the claimed invention. However, all references recited in the rejections above are in the same field of endeavor. Lueck teaches a portable digital audio player 100 (figure 1) comprising, among other components, a least flash memory 140 of fig. 1 (corresponding to the memory module) to store audio files wherein the audio files may be in different audio formats; the flash memory contains stored program files for decoding each type of audio formats allowing users of the portable communication device to listen to their desired song even though they store in different formats (e.g., M133 and AAC) and (column 2 lines 61-67 and column 3 lines 10-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the technique of Lueck within the system of Rydbeck in order that the audio files are stored in the memory as separate files for each song, which may be in different formats; thus increasing the efficiency of the portable communication device, and the allowing users of the communication to play any type of songs they desire without concern of the type of format.

The rejections have been rewritten to clarify the Applicant how the Examiner interprets the claimed invention. The prior arts disclose a PC or any wireless communications unit such as PDA, cellular telephone, etc., operable to download audio files via the Internet or wireless station. The wireless communication unit includes a memory operable to store audio files of different formats. It is known that download audio files from a service provider requires log on (corresponding to authentication). The prior art also teaches altering audio files when receiving incoming calls (corresponding to stop audio files when detecting incoming calls. The Applicant's claimed invention is not distinct from the applied references. It appears that the Applicant looked for the exact language of the claims, not for similar language. It is to be noted that the Examiner has the duty to read the claims as broad as possible.

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

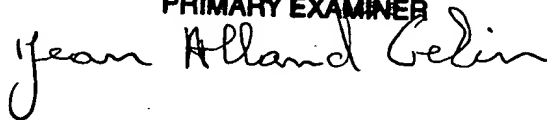
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Corsaro can be reached on (571) 272-7876. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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JGelin
July 29, 2006

JEAN GELIN
PRIMARY EXAMINER

A handwritten signature in cursive script that reads "Jean Allard Gelin". The signature is written in black ink and is positioned below the printed name and title.